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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,310	08/05/2003	Daniel L. Mork	23338	7871

24932 7590 01/13/2005

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EXAMINER	
SUN, XIUQIN	

ART UNIT	PAPER NUMBER
2863	

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/634,310	MORK, DANIEL L.	
	Examiner	Art Unit	
	Xiuqin Sun	2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 November 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *3-6* is/are allowed.

6)☒ Claim(s) *1 and 2* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *13 November 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Diaz et al. (U.S. Pat. No. 5,890,128) in view of Yoshimura et al. (U.S. Pat. No. 5,989,200).

Diaz et al. teach a food and exercise aid (see Abstract), comprising: (a) a memory for storing nutritional information for a variety of food items and metabolic equivalent information for a variety of exercises (col. 13, lines 19-31 and col. 15, lines 5-17); (b) a controller connected with said memory for controlling the selection of information to be obtained from said memory (col. 15, lines 5-17); (c) a calculator connected with said memory for calculating individual calorie burning rates based on the exercise characteristics and the user's personal data which the user enters into the system or selects from the memory (col. 13, lines 19-36;); and (d) a display connected with said memory and with said calculator for displaying the nutritional and metabolic equivalent information and the calculated exercise duration time (col. 13, lines 36-38;

and col. 15, lines 26-45). Diaz et al. further teaches: said memory further stores weight information which can be displayed on the display and used by said calculator for said calculation (col. 15, lines 33-45).

Diaz et al. do not mention explicitly: calculating and presenting an exercise duration time necessary to burn the calories of a selected food item via a selected exercise.

Yoshimura et al. disclose an exercise amount measuring device for measuring an exercise amount of a living body and displaying the measured exercise amount (see Abstract), and teach: calculating and presenting an exercise duration time necessary to burn the calories of a selected food item via a selected exercise (Figs. 9A, 9B, 20A, 20B, 21A and 21B; cols. 1-2, lines 66-3; col. 2, lines 18-23, lines 43-48 and lines 64-67; col. 3, lines 1-4 and lines 21-25; col. 6, lines 29-53; and cols. 10-12, lines 55-11).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the teaching of Yoshimura et al. in the invention of Diaz et al. in order to provide a food and exercise aid which allows a user recognize not only an exercise amount necessary to consume calories of ingested food but also a degree and a time length of exercise he should perform for the same purpose (Yoshimura et al., cols. 1-2, lines 66-3).

Allowable Subject Matter

3. Claims 3-6 are allowed.

Reasons for Allowance

4. The following is an examiner's statement of reasons for allowance:

The primary reason for the allowance of claim 5 is the claimed method step of calculating the duration of exercise necessary to burn off the calories of the food item after consumption by the individual according to the formula

T = kcal / MET x 3.5 x W / 200

where T is the exercise time, in minutes; kcal is the number of kilocalories for the selected food item; MET is the metabolic equivalent for the selected exercise; and W is the selected weight of the individual, in kilograms. It is this limitation found in the claim, as it is claimed in the combination that has not been found, taught or suggested by the prior art of record, which makes this claim allowable over the prior art.

The primary reason for the allowance of claims 3, 4 and 6 is the inclusion of the limitation of a calculator connected with said memory for calculating an exercise duration time necessary to burn off the calories of a selected food item via selected exercise according to the formula

T = kcal / MET x 3.5 x W / 200

where T is the exercise time, in minutes; kcal is the number of kilocalories for the selected food item; MET is the metabolic equivalent for the selected exercise; and W is the selected weight of the individual, in kilograms. It is this limitation found in the claim, as it is claimed in the combination that has not been found, taught or suggested by the prior art of record, which makes this claim allowable over the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Response to Arguments

6. Applicant's arguments received November 30, 2004 with respect to claims 1 and 2 have been considered but they are not persuasive. The Examiner carefully reviewed the cited prior art references and deems that the combination of the Diaz and the Yoshimura patents do inherently teach all the subject matters of claims 1 and 2 of the

instant application, as delineated in section 2 set forth above in this Office Action.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, it is obvious that the combined teachings of the two cited prior art references would have suggested to those of ordinary skill in the art a food and exercise aid including all the limitations recited in claims 1 and 2 of the instant application.

Contact Information

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Xiuqin Sun whose telephone number is (571)272-2280. The examiner can normally be reached on 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on (571)272-2269. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Xiuqin Sun
Examiner
Art Unit 2863

XS
January 10, 2005.

John Barlow
Supervisory Patent Examiner
Technology Center 2800